STAFF REPORT NO. 10

IMPASSE RESOLUTION METHODS

Objective: To provide information for the Personnel and Labor Relations Study Commission on Study Question 11:

Are present impasse resolution methods working?

What are other impasse resolution methods which could be utilized? What are their pros and cons?

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I. INTRODUCTION

Montana's 1973 Collective Bargaining for Public Employees Act provides for three types of measures to resolve an impasse in collective bargaining negotiations: mediation, fact finding, and voluntary binding arbitration. This legislation was enacted to provide effective alternatives to economic action--i.e., strike--which is currently available to all public employees in Montana, except nurses (in some cases)[1] and firefighters.[2]

Once an impasse in negotiations is reached, the most common procedure is to go through mediation and then fact finding, if mediation is unsuccessful in bringing the parties to a settlement. If fact finding also fails to reach a settlement, then the parties can choose either binding arbitration or economic action. Economic action can be instituted anytime after the expiration of a collective bargaining agreement, but if the parties even remotely believe there is a chance to reach a settlement, they will most likely go through mediation and fact finding.

Montana's impasse resolution methods are common methods used by most states. According to a 1979 study, 65% of all fifty states and the District of Columbia included some form of mediation in their impasse resolution procedure. Fact finding was also included in 65% of the procedures studied, though not always in conjunction with mediation. Arbitration was part of the procedure in 47% of the cases. (See Appendix D.)

The purpose of this paper is twofold: first, to briefly examine the various methods of impasse resolution currently used in Montana's public sector negotiations, including the effectiveness of these methods; and second, to provide options for improvement in any or all of the impasse resolution methods and procedures, if necessary.

II. MEDIATION

The Collective Bargaining for Public Employees Act requires mediation between the public employer and labor organization when either an agreement has not been reached "after a reasonable period of negotiation", or a dispute still exists at the time a prior collective bargaining agreement expires.

The Board of Personnel Appeals (BPA) is statutorily responsible not only for assigning a mediator once an impasse situation occurs, but also for bearing the costs of the mediation proceedings. While it is not improper for the parties in dispute to request a mutually-acceptable mediator, this procedure is not encouraged because of the difficulty in arranging mediators' schedules. It has been suggested that the parties should play a larger role in mediator selection so they will feel more comfortable with their mediator.

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[1]Section 39-32-110, M.C.A. (See Appendix A.)

[2]Section 39-34-105, M.C.A. (See Appendix B.)

Mediation has not served as a panacea for all impasse situations. BPA figures indicate that of the 334 disputes going to mediation since the passage of the Collective Bargaining for Public Employees Act in 1973, 125 (37%) have gone on to fact finding. The lack of success in the cases that go beyond mediation has been attributed to a variety of reasons, but the two proposed most often are the ready availability of fact finding and the shortage of competent mediators.

It has been suggested that mediation would be more effective if fact finding was not so readily available. Two parties involved in mediation may hold back concessions so as to have something more to concede during fact finding. This practice of withholding concessions was especially prevalent during the first few years of the Collective Bargaining for Public Employees Act. Public employees were anxious to close the gap between the public and private sector wages and benefits, but negotiators new to the process were uncertain of how to proceed.

Over the last three or four years, the gap between public and private sector wages and benefits has narrowed. Realizing this, unions have become somewhat less tenacious in their efforts to gain sizable concessions. The public employer is now often perceived as the more rigid of the parties, particularly in light of the current economic situation. Through gradual development, this leveling of positions and the experience of "old time" negotiators have combined to replace the militancy of negotiations with sophistication.

Sophistication within the negotiating process appears to involve a greater effort to settle during mediation. Statistics show that while the number of disputes going to mediation increases each year, the number of disputes going to fact finding is decreasing, both in absolute and relative terms. If the ready availability of fact finding does, as suggested, act as a major deterrent to successful mediation, then the disputes going to fact finding would remain constant or gradually increase in number. The significant decline in cases going to fact finding suggests that mediation efforts are affected less by the ready availability of fact finding than by other factors.

A shortage of competent mediators is the other reason most often cited as being a deterrent to successful mediation. One explanation for this shortage is the cyclical nature of collective bargaining negotiations. Negotiations are at their peak from May to October. During this period, requests for mediation services typically exceed the capacity of the BPA's five experienced staff members to provide this service.

A second explanation for the shortage of competent mediators is a lack of training programs to develop mediators. Currently, the BPA has the authority to establish a course of education for the training of fact

finders and arbitrators[3], but no similar authority exists for the training of mediators. The BPA supplements its staff of mediators with external ad hoc mediators during periods of high demand. While some of these ad hoc mediators are drawn from the ranks of trained fact finders and arbitrators, a shortage of competent mediators continues to exist.

Parties to collective bargaining feel that the importance of competent mediators to successful mediation cannot be overstressed. Although it would be misleading to suggest that the success of mediation rests solely on the availability of capable neutrals, there is little doubt that a competent mediator can significantly affect the outcome. The following options are offered as means by which the number as well as the quality of mediators can be enhanced:

Option 1: Consider developing additional sources of ad hoc mediators.

Such sources might include individuals with prior experience in the field requiring mediation--i.e., teachers and/or school administrators mediating disputes involving the field of education--or individuals with prior experience in serving as neutrals in private sector disputes.

The former group might be handicapped by a lack of exposure to labor-management issues, and the latter group, by a lack of exposure to public sector issues. But, repeated involvement with these issues would insure a supply of experienced mediators.

Option 2: Examine the possibility of establishing a mediator training program.

Such a program could be modeled after the BPA's training program for the fact finders and arbitrators. It could be structured to provide training for new mediators as well as continued development of present mediators. Critical to the success of such a program would be adequate funding.

III. FACT FINDING

As discussed in Staff Report #2, fact finding appears to be the most controversial of Montana's impasse resolution procedures. Arguments center primarily around whether to retain fact finding in its present form, retain it in an altered form, or discard it completely.

Opponents of fact finding maintain that eliminating the fact finding step, with its advisory-only recommendations, will put increased pressure on parties to settle at the mediation stage. The belief is that parties will work harder to settle during mediation if they know the next step is binding arbitration or economic action.

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[3]Section 39-31-311, M.C.A. (See Appendix C.)

Advocates of fact finding, on the other hand, maintain that the primary objective of both mediation and fact finding is to give the parties every opportunity to settle their dispute before resorting to economic action. As similar as fact finding is to mediation, proponents claim the former is worthwhile if it can be used to settle even a few disputes.

See Staff Report #2 for a more complete discussion of these issues. The following options were presented in that report:

Option 3: Continue fact finding in its current form.

Option 4: Amend the Collective Bargaining for Public Employees Act to eliminate fact finding as a step in Montana's impasse resolution procedure.

Shortening the impasse resolution process in this manner would apply additional pressure to settle during mediation. The parties would have only binding arbitration or economic action to choose from if mediation was unsuccessful.

Option 5: Amend the Collective Bargaining for Public Employees Act to grant mediators the authority to order fact finding.

This option would allow mediators to order fact finding if (s)he believes it will help the parties reach a settlement. The mediator's order would be binding, and appropriate penalties and enforcement procedures would be required.

Option 6: Amend the Collective Bargaining for Public Employees Act to make fact finding a mandatory procedure once either party requests it.

Currently, it is not clear that one party must go to fact finding just because the other party requests it. This option would compel both parties to participate, even if just one makes the request. It would effectively prevent either party from sitting out or taking economic action during the fact finding procedure. This option would also require appropriate penalties and enforcement procedures.

Option 7: Amend the Collective Bargaining for Public Employees Act to require that both mediation and fact finding be exhausted before either party is allowed to take economic action.

This option would not allow, but require the parties involved to take every opportunity to reach a settlement. Its purpose is to preclude either party from making too hasty a move toward economic action. As with the others, this option would require appropriate penalties and enforcement procedures.

IV. ARBITRATION

If both mediation and fact finding fail to resolve an impasse situation, the parties may agree to submit any or all issues to final binding arbitration.[4] This type of arbitration is called interest arbitration and should not be confused with grievance arbitration. Interest arbitration is used in settling disputes arising from collective bargaining negotiations. Grievance arbitration is used to settle application or interpretation disputes over the terms of an existing collective bargaining agreement.

As previously mentioned, arbitration and fact finding are very similar, the main difference being that the arbitrator's decision is binding, whereas the fact finder's decision is purely advisory. One reason for making the arbitrator's decision binding was to induce greater efforts toward settlement at the mediation and fact finding stages. A second reason was to insert finality into the impasse resolution procedure. The arbitrator's decision is treated statutorily as a collective bargaining agreement for purposes of enforcement; that is, it cannot be appealed except under certain extraordinary circumstances.

Interest arbitration in Montana will take one of two forms, depending on who is involved in the dispute. When most public employees and their employers agree to take their dispute to arbitration, they will use simple binding arbitration. The law does not require the arbitrator to follow any particular procedure or format. (S)he can decide completely in favor of one party or the other, or design a compromise between the two.

The other form of interest arbitration in Montana, called last-best-final offer arbitration, is used only by firefighters. Commonly referred to as final offer arbitration, this method is instituted by "either party or both jointly petitioning the Board of Personnel Appeals."[5] Final offer arbitration requires the neutral to choose one party's final offer over that of the other, either on an issue-by-issue basis or as an entire package. The fact that compromise is not one of the arbitrator's options makes final offer arbitration even less attractive as an alternative to mediation and fact finding. Again, the hope is that the parties will try harder to reach an agreement during mediation and fact finding.

It appears that the procedure involved in interest arbitration has developed no real problems. This can be attributed partially to its infrequent use and partially to the finality of its decision. However, certain matters involving arbitration as a whole have been discussed at length. One such matter concerns whether arbitration should be made mandatory for all public employees, while prohibiting the right to strike.

Advocates of this idea hold that employees paid by the taxpayers should not have the right to discontinue public services. Opponents,

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[4]Section 39-31-310, M.C.A.

[5]Section 39-34-101, M.C.A.

on the other hand, cite the difficulties of current no-strike states in determining and enforcing appropriate penalties for those public employees who strike illegally.

Another matter concerns the move to consolidate interest and grievance arbitration under the Uniform Arbitration Act. This legislation was originally proposed and defeated in the 1981 Legislative Session. Supporters of the Uniform Arbitration Act focused on the need to have a standardized arbitration procedure. The opposition, however, claimed that the Act would deprive unions of their right to bargain for a particular arbitration procedure. It should be noted that not all unions were opposed to the Act.

The following options are offered for the Commission's consideration:

Option 8: Allow the interest arbitration procedure to remain as it now stands.

Interest arbitration was designed to be an effective method of impasse resolution, not a popular one. The infrequency with which arbitration is used indicates its unpopularity. Since the institution of the Collective Bargaining for Public Employees Act in 1973, less than five disputes have gone to interest arbitration. In each case, the arbitrator's decision was accepted by both parties.

Option 9: Amend the Collective Bargaining for Public Employees Act to make strikes illegal and arbitration mandatory for all disputes going beyond mediation and fact finding.

Some method of impasse resolution is often made mandatory if the right to strike is prohibited. Care would be required in determining appropriate penalties to be imposed on striking public employees and how these penalties will be enforced.

V. ALTERNATIVE METHODS OF IMPASSE RESOLUTION

Research indicates that most of the impasse resolution methods used in other states are similar to those used in Montana. They are usually variations of mediation, fact finding, and arbitration. The arbitration procedure is a good example. Some states prohibit arbitration completely; others have either optional or mandatory conventional arbitration; still others use mandatory final offer arbitration on a package basis; and finally, there are some who use final offer arbitration on an issue-by-issue basis. Most variations of the three major impasse resolution methods are included in the above options.

A few unique impasse resolution methods do exist, however. In Florida, if either party rejects the fact finder's report, the dispute is submitted to the legislature. At a public hearing, the legislature considers the fact finder's report along with the views of the parties and takes final action in the public interest.

While this method may be more democratic than normal arbitration, it may also create a time problem, particularly in Montana. Because the legislature meets only once every two years, it usually has more than enough on its agenda to keep it busy. Adding even a few collective bargaining disputes would only aggravate the situation.

Another unique method of impasse resolution is used in Texas. If voluntary arbitration is not selected, the party representing labor may bring suit in district court to require the employer to meet the conditions of employment of comparable private sector employees in the local market.

Though this method may be effective, the problems it could create are significant. First, there is again the question of timeliness. In Montana, where public employee strikes are not prohibited, there would be nothing to stop the public employees from striking while the suit is in court. And second, there is a question regarding the employer's ability to pay. The employer cannot grant wage or benefit increases it does not have in its allowed budget.

One observation concerning both the Florida and Texas methods is that they appear to be taking a step backward. By assigning negotiation disputes to the court or legislature, these states are getting away from one of the main purposes for developing special impasse resolution methods, which is to relieve the court and legislature of the duty of settling negotiation disputes. Most states have opted to either allow public employee strikes or make an existing method of impasse resolution mandatory.

Still another method of impasse resolution, called med-arb, is used by Wisconsin's municipal employees, excluding police and firefighters. Under med-arb, the neutral begins by mediating the dispute. If no settlement is reached, the neutral will then arbitrate on the basis of the parties' final offers.

Of the various alternative methods, med-arb appears to be the most promising for Montana, because it would fit easily into the existing impasse resolution structure. One problem, however, may be that the same neutral is used in both the mediation and arbitration sessions. This would be an advantage from the standpoint of not having to familiarize a different neutral at each stage. But if differences arose between one party and the med-arb neutral based on the former's behavior in mediation, the door might be opened to charges of favoritism in the final arbitration decision. Another potential problem concerns the neutrality of the mediator-arbitrator. Because the mediator-arbitrator is a state employee, the unions, in particular, may question the neutrality of his (her) decision.

purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(5) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-111. Proceedings in district court. The department of labor and industry, a health care facility, or an employee organization qualified to apply for an election under 39-32-108 may, in the name of its members or in its name, institute proceedings to restrain the commission of any improper practice listed in 39-32-109 or appeal from any determination by the department. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief or, on appeal, adjudicate whether the department has acted in abuse of discretion or upon arbitrary or discriminatory rules, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

Section
39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

Section
39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (2).

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board".

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (4).

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.
History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.
History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.
History: En. Sec. 6, Ch. 472, L. 1979.

CHAPTERS 35 THROUGH 50

RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

Part 1 — General Provisions

Section
39-51-101. Short title.
39-51-102. Declaration of state public policy.
39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds.
39-51-104. Chapter to become inoperative if federal act becomes inoperative.
39-51-105. Disbursement of funds if federal act becomes inoperative.
39-51-106. Approval by secretary of labor required for chapter to have effect.

Part 2 — Definitions

39-51-201. General definitions.
39-51-202. Employer defined.
39-51-203. Employment defined.
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39-51-205. Agricultural labor defined.
39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.

Part 3 — General Administrative Provisions

39-51-301. Administration — duties and powers of department.
39-51-302. Regulations and general and special rules.
39-51-303. Publication and distribution of materials.
39-51-304. Personnel.
39-51-305. Department to appoint appeals referees.
39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.
39-51-307. Department to create employment service.
39-51-308. Acquisition and disposition of property by department.
39-51-309. Representation of department and state in court.
39-51-310. Function of board.

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing

collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the factfinder, the board shall issue subpoenas for hearings conducted by the factfinder. The factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The factfinder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as factfinder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same

manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

APPENDIX D

SUMMARY OF SELECTED IMPASSE RESOLUTION METHODS

State	Strikes Prohibited	Mediation	Fact Finding	Arbitration	Have No Coll. Barg. with Public Emp.
Alabama	X				
Alaska	Ltd.*	X		Ltd.	
Arizona					X
Arkansas					X
California		X	Ltd.		
Colorado					X
Connecticut	X	X	X	X	
Delaware	X	X	X		
Dist. of Col.	X	X	X	X	
Florida	X	X	X		
Georgia	X		X		
Hawaii	X	X	X	X	
Idaho		X	X		
Illinois	X	X	X	X	
Indiana	X	X	X	X	
Iowa	X	X	X	X	
Kansas	X	X	X		
Kentucky	X	X	X		
Louisiana					X
Maine	X	X	X	X	
Maryland	X	X	X		
Massachusetts	X	X	X	X	
Michigan	X	X	X	X	
Minnesota	Ltd.	X		X	
Mississippi					X

*Limited.

State	Strikes Prohibited	Mediation	Fact Finding	Arbitration	Have No Coll. Barg. with Public Emp.
Missouri	X				
Montana	Ltd.	X	X	X	
Nebraska	X	X	X	X	
Nevada	X	X	X	X	
New Hampshire	X	X	X	X	
New Jersey	X	X	X	X	
New Mexico	X	X	X		
New York	X	X	X	X	
North Carolina					X
North Dakota	X	X	X		
Ohio	X				X
Oklahoma	X		X		
Oregon	Ltd.	X	X	X	
Pennsylvania	Ltd.	X	X	X	
Rhode Island	X		X	X	
South Carolina					X
South Dakota	X				
Tennessee	X	X	X		
Texas	X	X		X	
Utah					X
Vermont	X	X	X	X	
Virginia	X				X
Washington	Ltd.	X	X	X	
West Virginia					X
Wisconsin		X	X		
Wyoming				Ltd.	

(U.S. Dept. of Labor, Labor-Management Services Administration, Summary of Public Sector Labor Relations Policies, U.S. GPO, Washington, C.C. (1979).